

(2009) 11 P&H CK 0047
In the Punjab And Haryana At Chandigarh

Mohan Singh (Dead) through Kirpal Singh and Others	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 157 PLR 291 : (2010) 1 RCR(Civil) 497

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—By virtue of power vested in this Court and originally, invoking the provisions under Articles 226/227 of the Constitution of India, petitioner Mohan Singh (since deceased represented through Kirpal Singh and Ors.) filed the present writ petition in the nature of certiorari for quashing the impugned orders dated 17.4.1985 (Annexure P5) passed by the Commissioner, Ambala Division, Ambala and 18.2.1987 (Annexure P6) passed by the Financial Commissioner, Haryana.

2. The matrix of the facts culminating in the commencement, relevant for disposal, of present writ petition and emanating from the record, is that Jai Pal son of Sharda Ram was the big landowner. His land was declared surplus under the provisions of Punjab Security of Land Tenures Act, 1953 (hereinafter to be referred as "the Punjab Act") vide order dated 28.7.1960 (Annexure R1) by the competent authority. He challenged the same before the statutory authorities. Ultimately, this Court remitted the matter back to the concerned Collector Agrarian for its decision in accordance with law. Thereafter, the Collector Agrarian after granting the exemption of the land, which had already been transferred on or before 30.7.1958, declared the remaining area as surplus vide order dated 12.5.1978 (Annexure R2). Since the big landowner did not provide the list of Khasra numbers to select his permissible area, therefore, the Naib Tehsildar Agrarian put the land measuring 36 standard acres 47 units in sarplus pool of his own vide order dated 20.5.1978 (Annexure R3). The prescribed authority issued

notice to the original petitioner-Mohan Singh and in pursuance thereof, he filed an application (Annexure R5) for giving him an opportunity of hearing, inter-alia, pleading that the land mentioned therein situated in village Kheri Shishgarh, Tehsil Pehowa, District Kurukshetra was purchased by him from the widow and son of big landowner Jai Pal. He received notice (dated 20.6.1983) on 2.7.1983 u/s 13(2) of the Punjab Act for taking possession. It was alleged that neither he had duly been served nor any opportunity to produce necessary evidence was provided to him u/s 90 of the Punjab Act. That being so, he prayed that he may be provided an opportunity to plead his case in this connection.

3. The prescribed authority, Guhla declined the request of the petitioner vide order dated 11.10.1983 (Annexure P3). But the appeal filed by him was accepted by the Collector, Kurukshetra vide order dated 6.2.1984 (Annexure P4).

4. However, the revision petition filed by Smt Kamla Devi and her sons (legal representatives of Jai Pal) was accepted and the order dated 6.2.1984 (Annexure P4) passed by the Collector was quashed by the Commissioner, Ambala Division, Ambala vide order dated 17.4.1985 (Annexure P5). The revision petition filed by Mohan Singh-petitioner was also dismissed in limine by the Financial Commissioner, Haryana vide order dated 18.2.1987 (Annexure P6).

5. The petitioner did not feel satisfied with the impugned orders of Commissioner (Annexure P5) and Financial Commissioner (Annexure P6) and challenged the same being illegal, arbitrary and void by filing the present writ petition on many grounds mentioned therein.

6. The contesting respondents resisted the claim of Mohan Singh-petitioner raised in his writ petition by filing the written statement, inter-alia pleading certain preliminary objections of its maintainability, objection of laches, locus standi and entitlement of the petitioner. On merits, it was admitted that Jai Pal was the original landowner and his surplus area was declared under the provisions of the Punjab Act by the Collector Agrarian vide order dated 28.7.1960. He filed Civil Writ Petition No. 639 of 1961 in this Court and the matter was remanded to the Collector to re-determine the surplus area. Thereafter, the Collector Agrarian vide order dated 12.5.1978 re-determined the surplus area case of Jai Pal and vide order dated 20.5.1978, the Collector specified the Khasra numbers comprised in surplus area. The factum of the orders indicated here-in-above and purchase by Mohan Singh from his vendor vide sale deed dated 18.6.1974 was also admitted. The contesting respondents claimed that since the surplus area case of the above landowner was finally decided by the Collector Agrarian, Kaitbal on 12.5.1978 so whatever contentions were raised by the petitioner before the Commissioner and the Financial Commissioner, the same were dealt with in the impugned orders (Annexures P5 and P6). According to the contesting respondents, there is no legal infirmity in the impugned orders. The surplus area case of original landowner is stated to be decided under the provisions of the Punjab Act and the petitioner was not entitled for any benefit in this respect in view of Section 33 the Haryana Ceiling

on Lands Holdings Act, 1972 (hereinafter to be referred as "the Haryana Act"). In all, according to the contesting respondents that as the petitioner subsequently purchased the land in dispute at his own risk and cost from the vendor, therefore, he was not entitled for any exemption in this respect. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the writ petition and prayed for its dismissal. That is how I am seized of the matter.

7. At the very outset, it may be mentioned here that although the petitioner has challenged the impugned orders in this petition on the various grounds mentioned therein, but learned Counsel for the petitioner has confined his argument only to the limited extent of legal proposition that Mohan Singh-petitioner was entitled to the benefit of Section 8(3) of the Haryana Act.

8. Having heard the learned Counsel for the parties, having gone through the record of the case with their valuable help and after bestowal of thoughts over the entire matter, to me, as the impugned orders (Annexures P5 and P6) cannot legally be sustained, therefore, the present writ petition deserves to be partly accepted, for the reasons mentioned here-in-below.

9. Learned Counsel for the petitioners in this regard has contended with some amount of vehemence that since Mohan Singh petitioner purchased the land on 18.6.1974 and the land declared surplus was put in the surplus pool and stood vested in the Haryana Government in view of the provisions of Section 12 read with Section 33 of the Haryana Act, in that eventuality, he was entitled to the benefit of Section 8(3) of the Haryana Act. In order to substantiate the argument, he has placed reliance on the judgments of this Court in Dhvan Chand v. State of Haryana 1983 P.L.J. 395 and Balwant Singh v. State of Haryana 1997 (3) R.C.R. 182 in this regard.

10. On the contrary, it has been urged on behalf of all the respondents that as the area of big landowner Jai Pal has already been declared surplus under the Punjab Act, therefore, the petitioner was not entitled to the benefit as envisaged u/s 8 (3) of the Haryana Act. The argument further proceeds that since the petitioner did not challenge the declaration of surplus area by filing appeal or revision, and as such, the case cannot be reopened and transferees are not entitled to any notice before utilization. In this respect, learned Counsel for the private respondents has placed reliance on the judgments of the Hon"ble Supreme Court of India in Smt. Bhagwanti Devi and Another Vs. State of Haryana and Another, , Amar Singh and Others Vs. Ajmer Singh and Others, , Surinder Nath Dewan Vs. State of Haryana and others, and the judgments of this Court in Gujjar Singh Vs. Kaur Singh, , Uday Ram and Ors. v. State of Haryana and Ors. 1995 P.L.J. 383, Dharam Pal and Ors. v. State of Haryana and Ors. (2002) 130 P.L.R. 605 and Janga and Ors. v. Zora Singh and Ors. 2003 (2) PLJ 163.

11. The alternative argument of learned Counsel for the respondents is that as

the land was declared surplus under the Punjab Act, so provisions of Haryana Act are not applicable to the present case and any such benefit can only be granted only if the surplus area case has been decided under the Haryana Act and not otherwise, in view of the law laid by the Hon"ble Apex Court in *Mala Singh v. The Financial Commissioner and Ors.* 1994 PLJ 42 and *Inder Singh and Ors. v. The State of Punjab and Ors.* 1978 R.L.R. 566.

12. The Hon"ble Supreme Court in *Smt. Bhagwanti Devi's case* (supra) observed in para 5 as under-

Therefore, from the appointed day the possession held by appellants of surplus lands become unlawful and entitles the Collector or competent officer to resume possession of them from appellants. Neither Section 12(3) nor Sections 7 and 9 of the Haryana Act empower the ceiling authority to reopen the proceedings relating to surplus lands which had become final is also made clear by Section 33(2)(ii) thereof. Section 33(2)(ii) says that the surplus area determined in the pending proceedings under the Act shall be done under that Act and surplus land shall vest in and be utilized by the State Government in accordance with the provisions of the 1972 Act. Sub-section 2(ii) of Section 33, no doubt, deals with determination of surplus area pending proceeding under the Punjab Law as on the notified date and vesting of the surplus area so determined in the State. The legislative intendment, therefore, appears to be that the surplus area declared under Punjab Law shall remain to be surplus. If any area that becomes surplus under the Haryana Act since the permissible area was reduced from 30 standard acres to 17 1/2 acres, that surplus area should be determined u/s 7 read with Section 9. Therein if a son becomes major and resides separately he is entitled to a separate unit etc. However, it does not appear that the surplus area declared under the Punjab Law should be reopened and recomputed under 1972 Haryana Act. No such express provision was engrafted in 1972 Act. Though the family of the appellants have swelled and some of the minors have become majors, the appellants are not entitled to have the surplus area which had become final reopened for recomputation under the 1972 Haryana Act. Thus considered, we find that the High Court was fully justified in dismissing the writ petitions. The appeals are, therefore, dismissed, but without costs.

13. The observations in the cases of *Amar Singh and Surinder Nath Dewan* (supra) are also to the same effect. It was held by this Court in the cases of *Gujjar Singh, Udey Ram, Dharam Pal and Janga* (supra) that "if the land was declared surplus under the Punjab Act on the coming into enforcement of the Haryana Act since the land stood vested in the Haryana State on 24.1.1971 in terms of Section 12(3) of the Haryana Act, the State had a right to utilize the area which formed part of the surplus pool in terms of utilization of surplus area scheme framed under the Haryana Act."

14. In *Mala Singh's case* (supra), the Hon"ble Supreme Court has observed that "land under possession of old tenants was declared surplus and tenants permitted to continue in possession of tenancy land declaring it (surplus area) as

tenant's permissible area, the land stood utilized on the date when surplus area in possession of tenants declared as tenant's permissible area. In case of death of landowner after utilization of land, his successors cannot take advantage of the fact that they have become small landowners after death of their father."

15. It was held by this Court in Inder Singh's case (supra) that "as per sub clause (i) of Sub section (2) of Section 28 of the Punjab Land Reforms Act, the proceedings for the determination of the surplus area pending under the old laws immediately before the commencement of the Punjab Land Reforms Act are to be disposed of under the old laws and for such cases the Reforms Act shall not be taken to have been passed. It means that if a case for the determination of surplus area under the Pepsu Act was pending immediately before the commencement of the Reforms Act, then for the purposes of that case, the Reforms Act shall not be taken to have been passed. The implication of not taking into consideration the provisions of the Reforms Act in such cases would be that the landowner will not be entitled to claim benefit of permissible area in respect of his adult son under Sub-section (1) of Section 5 of the Punjab Land Reforms Act, 1973."

16. Thus, it would be seen that the total sum & substance and the crux of the law laid down in the aforesaid judgments is that if an area was declared surplus under the Punjab Act and land vested under the Haryana Act, the case cannot be reopened and transferee is not entitled to any notice before utilization. The provisions of the Haryana Act are applicable only to surplus area case to be decided under this Act and not under the Punjab Act and the surplus area declared under the Punjab Act will be governed by Section 33 of the Haryana Act. It was also reiterated that the surplus area proceedings cannot be reopened by taking benefit of provisions of Haryana Act claiming that land owners are entitled to re-valuation of the surplus area though proceedings have become final under the Punjab Act with regard to declaration of surplus area simply because surplus land declared under the Punjab Act not utilized and it remained in possession of the landowners would not make any difference. The land declared surplus under the Punjab Act and stood vested in the State u/s 12(3) of the Haryana Act and non-utilization of the surplus land till the date of vesting is of no consequence and makes no difference.

17. Possibly, no one can dispute about the law laid down in the aforesaid judgments, but to my mind, the same are not mutates mutandi applicable as the facts in those cases are entirely different and are distinguishable from the facts of the present controversy, because the petitioner-Mohan Singh had neither claimed any exemption of his land from the surplus pool nor his counsel has pressed the ground of challenging the declaration of surplus area as such, nor he had claimed the re-opening of the entire matter as contained u/s 8(1) of the Haryana Act. As mentioned above, the claim of the petitioner was limited to the extent of legal proposition" for granting the benefit u/s 8(3) of the Haryana Act only relatable to the selection of permissible area by the big landowner from

whom he had purchased his land by registered sale deed. To me, rather the law laid down in the aforementioned judgments advances the cause of the petitioner as much as the vesting of absolute right in State under the Haryana Act of that land which was declared surplus under the Punjab Act is concerned in this respect. Moreover, Section 8(3) of the Haryana Act has not been interpreted in any of the judgments relied on behalf of the respondents.

18. Be that as it may, now coming to real controversy between the parties, reference may be made to the Haryana Act, which came into force in 1972 and appointed day was nominated as 24th day of January 1971. Section 33 of this Act deals with repeal and savings, which is in the following manner:

33. Repeal and Savings.-(1) The provisions of the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, which are inconsistent with the provisions of this Act are hereby repealed.

(2) The repeal of the provisions of the enactments mentioned in Sub-section (1), hereinafter to as the said enactments, shall not affect-

(i) the applications for the purchase of land u/s 18 of the Punjab Law or Section 22 of the Pepsu Law, as the case may be pending immediately before the commencement of this Act, which shall be disposed of as if this Act had not been passed;

(ii) the proceeding for the determination of the surplus area pending immediately before the commencement of this Act, under the provisions of either of the said enactments, which shall be continued and disposed off as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by the State Government in accordance with the provisions of this Act.

(iii) the revisional power of the Financial Commissioner u/s 24 of the Punjab law or under Sub-section (3) of Section 39 of the Pepsu Law, as the case may be, shall be exercised as if this Act had not been passed; and the area declared surplus in exercise of such power shall vest in, and be utilised by, the State Government in accordance with the provisions of this Act:

(iv) the power exercisable u/s 5-C of the Punjab law or u/s 32-BB of the Pepsu law, as the case may be, shall be exercised as if this Act had not been passed; and the area determined surplus in exercise of such power shall vest in, and be utilised by the State Government in accordance with the provisions of this Act; Provided that the powers of the Pepsu Land Commission under the Pepsu law shall vest in, and be exercised by the Collector of the district concerned.

(3) Save as provided in Sub-section (2), no authority shall pass an order if any proceedings whether instituted before or after the commencement of this Act which is inconsistent with the provisions of this Act.

19. In other words, the provisions of the Punjab Act, which are inconsistent with the provisions of the Haryana Act, stood repealed and no authority shall pass an

order if any proceedings whether instituted before or after the commencement, which is inconsistent with the provisions of the Haryana Act.

20. Not only that, Section 12 of the Haryana Act postulates that "the surplus area of a landowner and all rights, title and interest shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrances." Sub-section (3) of this section further posits that "the area declared surplus or tenant's per-missible area under the Punjab law and the area declared surplus under the Pepsu Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day (24.1.1971) and the area which may be so declared under the Punjab law or the Pepsu law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration."

21. Thus, the co-joint reading of these provisions would reveal that if an area of landowner was declared surplus under the Punjab Act, from the date of which it was so declared as such shall be deemed to have been acquired by the State Government for a public purpose, all rights, title and interest of all persons in such area shall stand extinguished, such rights, title and interest shall vest in the State Government free from all encumbrances and sequently no authority can pass an order in any proceeding which is inconsistent with the provisions of the Haryana Act.

22. Meaning thereby, once such land had vested in the State free from all encumbrances by operation of law (Haryana Act) then any matter has to be dealt with the provisions of Haryana Act and not otherwise.

23. The matter did not rest there. The application (Annexure R5) for providing the opportunity to the petitioner Mohan Singh was dismissed by the prescribed authority vide order dated 11.10.1983 (Annexure P3). However, the appeal filed by him was accepted by the Collector vide order dated 6.2.1984 (Annexure P4), the operative part of which is as under:

After hearing the arguments of both the sides and after perusing the relevant record and after carefully scrutinizing the same, I have come to this conclusion that the order with regard to surplus area was passed on 12.5.1978, whereas the appellant had purchased the land on 18.5.74 after the remand (there seems to be clerical mistake and it should be before remand) and this very landlord had mentioned in the sale deed that the khasra Nos. sold by him were neither in surplus nor he shall give them in surplus and yet he gave in the list of surplus land on 21.9.79, the khasra Nos. of the land in dispute, which straightway appear to be malafide of the owners under appeal and accept the present appeal and it is further directed that if the surplus land had to be taken, the same be taken from the land of the owner and if the same could not be completed from his land then to that extent the surplus land be taken from the land in dispute.

24. Such thus being the state of law and position on record, now the short and

significant question, though important, arises for determination in this case is whether the petitioners are entitled to the benefit as envisaged u/s 8(3) of the Haryana Act or not. Thus, the present controversy revolves within a very narrow compass.

25. Having regard to the rival contentions of learned Counsel for the parties, to my mind, since the land in dispute had already vested in the State under the Haryana Act, therefore, the case of the petitioners deserves to be considered for the grant of the benefit u/s 8 (3) of the Haryana Act.

26. However, the main celebrated argument of learned Counsel for the respondents that as the land was declared surplus under the Punjab Act, therefore, the same cannot be reopened under the Haryana Act and the land subject matter of sale deed of petitioners cannot be exempted from surplus pool, is not only devoid of merit but misplaced as well. No doubt, no such exemption can possibly be claimed or granted to the petitioners, in view of clear and implicit legislative mandate underlying Section 8 (1) of the Haryana Act, but as indicated above, the petitioners are neither claiming the exemption of their land from the surplus pool nor they have sought to challenge and reopen the declaration of such surplus area. However, they are only claiming the legal benefit as envisaged u/s 8(3) of the Haryana Act, which posits that "if any person transfers or disposes of any land after the appointed day in contravention of the provisions of Sub-section (1), the land so transferred or disposed of shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer or disposition is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area. If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the promotion to the land transferred or disposed off to them."

27. The bare perusal of record would reveal that in pursuance of the direction of this Court having exempted the land already transferred before 30.7.1958, the Collector Agrarian again declared that rest of surplus land will remain in surplus pool and the big landowner shall furnish by 19.5.1978 the list of the land for selecting his permissible area to Naib Tehsildar Agrarian and if he fails to do so then the Naib Tehsildar Agrarian himself shall keep surplus area in the surplus pool after necessary calculation, vide order dated 12.5.1978 (Annexure R2). As the big landowner failed to give the list of the land, therefore, Naib Tehsildar Agrarian reserved and put the land in surplus pool of his own vide order dated 20.5.1978 (Annexure R3). The appeal filed by Jai Pal was accepted by the Commissioner, Ambala Division, Ambala vide order dated 14.1.1979 (Annexure P1). The matter was remanded directing the Collector to permit him to give list of khasra numbers to be given in surplus pool. Thereafter, the Collector, without

issuing notice to the affected persons, exempted from surplus land bearing Khasra Nos. 1, 50/24-25, 67/4-5- 6-15 and in lieu thereof included khasra Nos. 65/3-8-9-12-13 min 7-7, 19, 22 =37 kanals 6 marlas in the surplus pool vide order dated 20.10.1981 (Annexure R4). Moreover, the petitioner purchased the land in dispute vide sale deed dated 18.6.1974 (Annexure P2) much prior to the re-determination of the surplus area vide orders (Annexures R2, R3 and R4) and, thus, seen from any angle, petitioners become person interested after the commencement of the Haryana Act. If the petitioners are the persons interested and the land had already vested in the State Government under the Haryana Act then naturally, they are entitled to the notice and consideration for the purpose of granting the legal benefit of Section 8(3) of the Haryana Act as discussed here-in-above. Although, the transfer in favour of the petitioner Mohan Singh may be void only qua the State for the purpose of Section 8 (1) of the Haryana Act but would be valid and binding between the parties inter se in view of law laid down by the Full Bench of this Court in Chet Ram and Ors. v. Amin Lal and Anr. (1982) 84 P.L.R.177 and thus he becomes person interested. Moreso, even otherwise on the principle of natural justice, the original petitioner was entitled to notice and opportunity of hearing, which is totally lacking in this case.

28. The other feeble argument of learned Counsel for the respondents that the transfer of the land by landowner and its purchaser without the leave of the Court was hit by doctrine of lis pendens again has neither any force nor the observations of Hon'ble Apex Court in Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another, , Sanjay Verma Vs. Manik Roy and Others, and Usha Sinha Vs. Dina Ram and Others, in which the facts are entirely different, are applicable to the facts of this case.

29. In the aforesaid judgments, while interpreting the provisions of Section 52 of the Transfer of Property Act, 1882 and Order 1 Rule 10 CPC, it was held that "if the transfer of property during litigation is without permission of the Court, such transaction will be hit by the doctrine of lis pendens and transferee pendente lite will not be entitled to be impleaded as party to the suit as of right." Hardly, there is any dispute about this proposition of law, but the same would not come to the rescue of the respondents because as stated here-in-above, the original petitioner did not claim the exemption of his land from the surplus pool which is barred u/s 8(1) of the Haryana Act but he has only claimed the benefit as contemplated u/s 8(3) of the Haryana Act only with regard to the selection of land of permissible area of big landowner. His case from the very beginning was that surplus land be taken from the land of the big landowner first and if the same could not be completed from his land then to that extent surplus land be taken from his land. Under these circumstances, it cannot possibly be said that the question of doctrine of lis pendens is at all applicable in the instant case under the present set of circumstances.

30. An identical question arose for consideration before this Court in the cases of Diwan Chand and Balwant Singh (supra). Having interpreted the provisions of

Section 8 (1) and (3) of the Haryana Act, it was observed that if any big landowner effected transfer of land in excess of the permissible area after the appointed day, in contravention of the provisions of Sub-section (1) of Section 8 i.e., if the transfer was not bona fide, then the transferred land was to be considered to be the land of the big landowner and at the same time it was reiterated that the surplus area shall be taken in the first instance from the area left with the big landowner and the transferees were to be touched only if the surplus area could not be made good from the area left with the big landowner.

31. Therefore, it is held that petitioners being interested persons are prima facie entitled to be considered for the grant of benefit u/s 8(3) of the Haryana Act and Collector vide order dated 6.2.1984 (Annexure P4) accepted the appeal of petitioner Mohan Singh and has rightly directed the prescribed authority that if the surplus land had to be taken, the same be taken from the land of the owner first and if the same could not be completed from his land then to that extent the surplus land be taken from the land of petitioner Mohan Singh. But to me, the Commissioner and Financial Commissioner appear to have wrongly and completely ignored this legal aspect of the matter and had nonsuited the petitioner Mohan Singh mainly on the ground that he purchased the area at his own risk and he himself to be blamed. He cannot claim compensation from the State for his own negligence as the land had already vested in the State u/s 12(3) of the Haryana Act.

32. Here to my mind, the Commissioner and Financial Commissioner have fell in grave error, said go bye and completely ignored the statutory provisions of Section 8 (3) of the Haryana Act as discussed here-in-above. The reasons assigned by the Commissioner and Financial Commissioner in the impugned orders (Annexures P5 and P6) are foreign to the real controversy between the parties. They have thus completely ignored the determination of applicability of Section 8(3) of the Haryana Act, which was decided by the Collector in order (Annexure P4). Hence, the contrary arguments of learned Counsel for the respondents *stricto sensu* deserve to be and are hereby repelled as the observations of this Court in the cases of Diwan Chand and Balwant Singh (*supra*) are the complete answer to the problem in hand. Therefore, it is held that the land in dispute declared surplus under the Punjab Act had already vested in the State of Haryana after the commencement of the Haryana Act. The petitioners cannot possibly claim the exemption of their land, subject matter of the sale deed dated 18.6.1974 (which is after 30th July, 1958), in view of the provision u/s 8(1) of the Haryana Act. Meaning thereby, the surplus area case of big landowner stood finally decided and cannot legally be reopened in this respect. Be that as it may, but the land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer or disposition is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area. If the area left with him is less than the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in

it the land so transferred or disposed of shall also be deemed to be the surplus area. Needless to say, naturally the petitioners are entitled to the benefit in respect of selection of permissible area u/s 8(3) of the Haryana Act. Thus, the impugned orders (Annexures P5 and P6) cannot legally be maintained and deserve to be set aside, in the obtaining circumstances of the case.

33. No other point worth consideration has been urged or pressed by the learned Counsel for the parties.

34. In the light of the aforesaid reasons, the instant writ petition is partly accepted, the impugned orders (Annexures P5 and P6) are hereby set aside and the matter is remitted back to the competent authority for a limited purpose to consider the case of petitioners for the grant of benefit envisaged u/s 8(3) of the Haryana Act, only with regard to the selection of permissible area by the big landowner, without touching the orders of declaration of surplus area in any manner as discussed here-in-above. Hence, the order dated 6.2.1984 (Annexure P4) passed by the Collector is hereby restored to that limited extent only.

35. Parties through their counsel are directed to appear before the competent authority on 22.12.2009.